

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

INFO AMCONSUL MEDAN

AMCONSUL SURABAYA

CINCPAC HONOLULU HI

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E.O. 11652: N/A

TAGS: AFSP, ID

SUBJECT: GAO SECURITY ASSISTANCE AND COUNTRY SURVEYS

REF: JAKARTA 3937, AND PREVIOUS

1. FOLLOWING IS FULL TEXT MEMORANDUM FROM PRESIDENT TO SECRETARIES OF STATE AND DEFENSE DATED AUGUST 30, 1971 AS REQUESTED REFTEL, PARA 3B:

IT HAS BEEN BROUGHT TO MY ATTENTION THAT THE SENATE FOREIGN RELATIONS COMMITTEE HAS REQUESTED VARIOUS INTERNAL WORKING PAPERS, AND PLANNING DATA OF THE EXECUTIVE BRANCH RELATING TO THE MILITARY ASSISTANCE PROGRAM.

AS YOU KNOW, THE POLICY OF THIS ADMINISTRATION, AS DIRECTED IN MY MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, DATED MARCH 24, 1969, IS TO COMPLY TO THE FULLEST EXTENT POSSIBLE WITH CONGRESSIONAL REQUESTS FOR INFORMATION. IN PURSUANCE OF THIS POLICY, THE EXECUTIVE DEPARTMENTS AND AGENCIES HAVE PROVIDED TO THE CONGRESS AN UNPRECEDENTED VOLUME OF INFORMATION. IN ADDITION, UNCLASSIFIED

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ADMINISTRATION WITNESSES HAVE APPEARED ALMOST CONTINUOUSLY

BEFORE APPROPRIATE COMMITTEES OF THE CONGRESS TO PRESENT PERTINENT FACTS AND INFORMATION TO SATISFY CONGRESSIONAL NEEDS IN ITS OVERSIGHT FUNCTION AND TO PRESENT THE VIEWS OF THE ADMINISTRATION ON PROPOSED LEGISLATION.

THE PRECEDENTS ON SEPARATION OF POWERS ESTABLISHED BY MY PREDECESSORS FROM FIRST TO LAST CLEARLY DEMONSTRATE, HOWEVER, THAT THE PRESIDENT HAS THE RESPONSIBILITY NOT TO MAKE AVAILABLE ANY INFORMATION AND MATERIAL WHICH WOULD IMPAIR THE ORDERLY FUNCTION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, SINCE TO DO SO WOULD NOT BE IN THE PUBLIC INTEREST. AS INDICATED IN MY MEMORANDUM OF MARCH 24, 1969, THIS ADMINISTRATION WILL INVOKE EXECUTIVE PRIVILEGE TO WITHHOLD INFORMATION ONLY IN THE MOST COMPELLING CIRCUMSTANCES AND ONLY AFTER A RIGOROUS INQUIRY INTO THE ACTUAL NEED FOR ITS EXERCISE. I HAVE ACCORDINGLY CONDUCTED SUCH AN INQUIRY WITH REGARD TO THE CONGRESSIONAL REQUESTS BROUGHT TO MY ATTENTION IN THIS INSTANCE.

THE SENATE FOREIGN RELATIONS COMMITTEE HAS REQUESTED "DIRECT ACCESS TO THE EXECUTIVE BRANCH'S BASIC PLANNING DATA ON MILITARY ASSISTANCE" FOR FUTURE YEARS AND THE SEVERAL INTERNAL STAFF PAPERS CONTINUING SUCH DATA. THE BASIC PLANNING DATA AND THE VARIOUS INTERNAL STAFF PAPERS REQUESTED BY THE SENATE FOREIGN RELATIONS COMMITTEE DO NOT, INsofar AS THEY DEAL WITH FUTURE YEARS, REFLECT ANY APPROVED PROGRAM OF THIS ADMINISTRATION, FOR NO APPROVED PROGRAM FOR MILITARY ASSISTANCE BEYOND THE CURRENT FISCAL YEAR EXISTS. FURTHERMORE, THE BASIC PLANNING DATA REQUESTED REFLECT ONLY TENTATIVE INTERMEDIATE STAFF LEVEL THINKING, WHICH IS BUT ONE STEP IN THE PROCESS OF PREPARING RECOMMENDATIONS TO THE DEPARTMENT HEADS, AND THEREAFTER TO ME, FOR ONE-YEAR PROGRAMS TO BE APPROVED FOR THE ENSUING BUDGET YEAR.

I AM CONCERNED, AS HAVE BEEN MY PREDECESSORS, THAT UNLESS PRIVACY OF PRELIMINARY EXCHANGE OF VIEWS BETWEEN PERSONNEL OF THE EXECUTIVE BRANCH CAN BE MAINTAINED, THE FULL FRANK AND HEALTHY EXPRESSION OF OPINION WHICH IS ESSENTIAL FOR THE SUCCESSFUL ADMINISTRATION OF GOVERNMENT

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WOULD BE MUTED.

I HAVE DETERMINED, THEREFORE, THAT IT WOULD NOT BE IN THE PUBLIC INTEREST TO PROVIDE TO THE CONGRESS THE BASIC PLANNING DATA ON MILITARY ASSISTANCE AS REQUESTED BY THE CHAIRMAN OF THE SENATE FOREIGN RELATIONS COMMITTEE IN HIS LETTERS OF JULY 28 AND AUGUST 6, 1971, TO THE SECRETARY OF DEFENSE.

I, THEREFORE, DIRECT YOU NOT TO MAKE AVAILABLE TO THE CONGRESS ANY INTERNAL WORKING DOCUMENTS WHICH WOULD DISCLOSE TENTATIVE PLANNING DATA ON FUTURE YEARS OF THE MILITARY ASSISTANCE PROGRAM WHICH ARE NOT APPROVED

EXECUTIVE BRANCH POSITIONS.

I HAVE NOTED THAT YOU AND YOUR RESPECTIVE DEPARTMENTS HAVE PROVIDED MUCH INFORMATION AND HAVE OFFERED TO PROVIDE ADDITIONAL INFORMATION INCLUDING PLANNING MATERIAL AND FACTORS RELATING TO THE MILITARY ASSISTANCE PROGRAM TO THE SENATE FOREIGN RELATIONS COMMITTEE. THESE PLANNING MATERIALS AND FACTORS WILL ENABLE THE CONGRESS TO CONSIDER CURRENT YEAR APPROVED PROGRAMS IN LIGHT OF CONSIDERATIONS BEARING ON THE FUTURE WHICH CAN NOW BE FORESEEN. IN ACCORDANCE WITH MY GENERAL POLICY TO PROVIDE THE FULLEST POSSIBLE INFORMATION TO THE CONGRESS, I WILL EXPECT YOU AND THE SECRETARIES OF OTHER EXECUTIVE DEPARTMENTS TO CONTINUE TO MAKE AVAILABLE TO THAT COMMITTEE ALL INFORMATION RELATING TO THE MILITARY ASSISTANCE PROGRAM NOT INCONSISTENT WITH THIS LETTER.

2. TO COMPLETE YOUR FILES, FOLLOWING IS TEXT OF PRESIDENTIAL MEMORANDUM DATED MARCH 24, 1969, REFERRED TO IN ABOVE MEMORANDUM OF AUGUST 30, 1971:

THE POLICY OF THIS ADMINISTRATION IS TO COMPLY TO THE FULLEST EXTENT POSSIBLE WITH CONGRESSIONAL REQUESTS FOR INFORMATION. WHILE THE EXECUTIVE BRANCH HAS THE RESPONSIBILITY OF WITHHOLDING CERTAIN INFORMATION THE DISCLOSURE OF WHICH WOULD BE INCOMPATIBLE WITH THE PUBLIC INTEREST, THIS ADMINISTRATION WILL INVOKE THIS UNCLASSIFIED

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AUTHORITY ONLY IN THE MOST COMPELLING CIRCUMSTANCES AND AFTER A RIGOROUS INQUIRY INTO THE ACTUAL NEED FOR ITS EXERCISE. FOR THOSE REASONS EXECUTIVE PRIVILEGE WILL NOT BE USED WITHOUT SPECIFIC PRESIDENTIAL APPROVAL. THE FOLLOWING PROCEDURAL STEPS WILL GOVERN THE INVOCATION OF EXECUTIVE PRIVILEGE:

1. IF THE HEAD OF AN EXECUTIVE DEPARTMENT OR AGENCY (HEREAFTER REFERRED TO AS "DEPARTMENT HEAD") BELIEVES THAT COMPLIANCE WITH A REQUEST FOR INFORMATION FROM A CONGRESSIONAL AGENCY ADDRESSED TO HIS DEPARTMENT OR AGENCY RAISES A SUBSTANTIAL QUESTION AS TO THE NEED FOR INVOKING EXECUTIVE PRIVILEGE, HE SHOULD CONSULT THE ATTORNEY GENERAL THROUGH THE OFFICE OF LEGAL COUNSEL OF THE DEPARTMENT OF JUSTICE.

2. IF THE DEPARTMENT HEAD AND THE ATTORNEY GENERAL AGREE, IN ACCORDANCE WITH THE POLICY SET FORTH ABOVE, THAT EXECUTIVE PRIVILEGE SHALL NOT BE INVOKED IN THE CIRCUMSTANCES, THE INFORMATION SHALL BE RELEASED TO THE INQUIRING CONGRESSIONAL AGENCY.

3. IF THE DEPARTMENT HEAD AND THE ATTORNEY GENERAL AGREE THAT THE CIRCUMSTANCES JUSTIFY THE INVOCATION OF EXECUTIVE PRIVILEGE, OR IF EITHER OF THEM BELIEVES THAT THE ISSUE SHOULD BE SUBMITTED TO THE PRESIDENT, THE MATTER SHALL BE TRANSMITTED TO THE COUNSEL TO THE PRESIDENT, WHO WILL ADVISE THE DEPARTMENT HEAD OF THE PRESIDENT'S DECISION.

4. IN THE EVENT OF A PRESIDENTIAL DECISION TO INVOKE EXECUTIVE PRIVILEGE, THE DEPARTMENT HEAD SHOULD ADVISE THE CONGRESSIONAL AGENCY THAT THE CLAIM OF EXECUTIVE PRIVILEGE IS BEING MADE WITH THE SPECIFIC APPROVAL OF THE PRESIDENT.

5. PENDING A FINAL DETERMINATION OF THE MATTER, THE DEPARTMENT HEAD SHOULD REQUEST THE CONGRESSIONAL AGENCY TO HOLD ITS DEMAND FOR THE INFORMATION IN ABEYANCE UNTIL SUCH DETERMINATION CAN BE MADE. CARE SHALL BE TAKEN TO INDICATE THAT THE PURPOSE OF THIS REQUEST IS TO PROTECT THE PRIVILEGE PENDING THE DETERMINATION, AND THAT THE

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REQUEST DOES NOT CONSTITUTE A CLAIM OF PRIVILEGE. RUSH

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